

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Request of

ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS

)
) CCB/CPD 97-30
)

For Clarification of
the Commission's Rules Regarding
Reciprocal Compensation for
Information Service Provider Traffic

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To: The Chief, Common Carrier Bureau

COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch"), pursuant to the Public Notice released July 2, 1997,^{1/} hereby comments on the letter filed with the Common Carrier Bureau (the "Bureau") requesting expedited clarification of the Commission's rules regarding the rights of a competitive local exchange carrier ("CLEC") to receive reciprocal compensation pursuant to Section 251(b)(5) of the Communications Act of 1934 (the "Act"), as amended by the Telecommunications Act of 1996^{2/} (the "1996 Act"), for the transport and termination of telecommunications traffic to CLEC subscribers that are internet service providers ("ISPs"). The following is respectfully shown:

^{1/} DA 97-1399.

^{2/} Pub. L. No. 104-104, 110 Stat. 56, *codified at*, 47 U.S.C. Sections 151 *et seq.*

I. Statement of Interest

1. AirTouch is an interested party. AirTouch actively participated in the legislative efforts that resulted in the passage of the 1996 Act and has been a commenting party in various proceedings before the Commission pertaining to compensation arrangements between incumbent local exchange carriers ("ILECs") and other telecommunications carriers. There are some principles of compensation raised by the ALTS request that are common to compensation issues faced by AirTouch as a Commercial Mobile Radio Service ("CMRS") provider. Because of the Commission's laudable efforts to assure that its implementation of the 1996 Act is fair and consistent, AirTouch has a cognizable interest in the manner in which the ALTS request is resolved.

II. The ALTS Request Should Be Granted

2. In AirTouch's view, the ALTS request can easily be resolved by recognizing that ISPs are to be treated for the time being as end users. Beginning with the Computer II proceeding in the 1970s, the Commission has distinguished between basic and enhanced communications services.^{3/} The category of enhanced services, which includes internet and other interactive computer networks, has been found by the Commission to be largely congruent with the category of information

^{3/} Second Computer Inquiry, Final Decision, 77 FCC 2d 384, 417 (1980).

services.^{4/} In the 1983 Access Charge Reconsideration Order,^{5/} the Commission decided that, though enhanced service providers ("ESPs") could use ILEC facilities to originate and terminate interstate calls, they would not be required to pay interstate access charges. As a result of these decisions, the ESPs (and ISPs) are able to purchase telecommunications services "under the same intrastate tariffs available to end users".^{6/} The conclusion that ESPs (and ISPs) are end users is further supported by the conclusion in the Interconnection First Report^{7/} that "enhanced service providers ... are ... not telecommunications carriers within the meaning of the Act...".

3. While the decision to treat ESPs and ISPs as end users rather than as carriers originally was considered to be an interim measure, the Commission has repeatedly ruled that the classification, and the resulting pricing, should not be changed for the time being.^{8/} This being the case, ALTS is entitled to the ruling it seeks. With the ISP being viewed as an end user, a call between a calling party and

4/ Non-Accounting Safeguards, First Report and Order and Further Notice of Proposed Rulemaking (CC Docket No. 96-149), FCC 96-149, released December 24, 1996, at ¶¶ 102-103 [1996 FCC LEXIS 7126; 5 Comm. Reg. (P & F) 696].

5/ MTS and WATS Market Structure, Memorandum Opinion and Order, (Docket No. 78-72), 97 FCC 2d 682, 711-722 (1983).

6/ Access Charge Reform, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, (CC Docket No. 96-262), FCC 96-488 released December 24, 1996, ¶ 285 [1997 FCC LEXIS 2591].

7/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, ¶ 995 (1996).

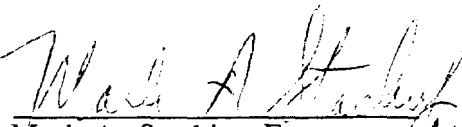
8/ Id. at ¶ 289; ESP Exemption Order (CC Docket No. 87-215), 3 FCC Rcd. 2631, 2633 (1988); Part 69 Open Network Architecture Order, (CC Docket No. 89-79), 6 FCC Rcd 4524, 4535 (1991).

an ISP both located in the same local calling area clearly should be viewed as a local end-to-end call for purposes of reciprocal compensation.

4. Section 251(b)(5) of the Act imposes on every ILEC the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications".^{9/} In the case of ISPs, telecommunications are deemed to terminate at the ISP's premises due to their treatment as end users under the current regulatory scheme. For ILECs to refuse to pay reciprocal compensation to a CLEC carrying traffic to an ISP violates a fundamental premise of the 1996 Act, which was intended to guarantee fair compensation to CLECs and others who transport and terminate to end users traffic delivered to them by an ILEC.

Respectfully submitted,

AIRTOUCH PAGING

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July 17, 1997

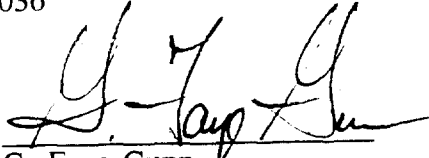
^{9/} 47 U.S.C. § 251(b)(5).

Certificate of Service

The undersigned hereby certifies that on this 17th day of July, 1997, a true and correct copy of the foregoing Comments of AirTouch Paging was sent via first-class mail, postage prepaid, or hand delivered, to the following:

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